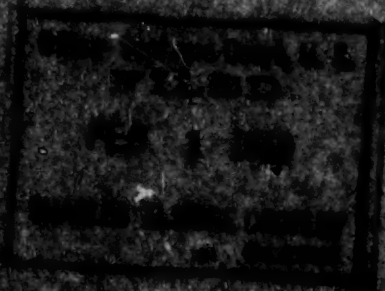


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RAILWAY MAIL PAY

IN THE MATTER OF THE APPLICATION OF GEORGIA &  
FLORIDA RAILROAD FOR INCREASED RATES OF  
PAY —

Submitted March 22, 1933. Decided May 10, 1933

UPON REEXAMINATION, RATES PAID APPLICANT FOR  
THE TRANSPORTATION OF MAIL FOUND FAIR AND  
REASONABLE

Moultrie Hitt and G. Kibby Munson for appli-  
cant.

Jennings C. Wise, special assistant to Attorney  
General, and Edwin A. Niess for Postmaster  
General.

REPORT OF THE COMMISSION ON FURTHER HEARING  
DIVISION 5, COMMISSIONERS BRAINERD, PORTER, AND  
FARRELL

By Division 5:

Exceptions were filed by applicant to the report  
proposed by the examiner, and the case was orally  
argued.

By application filed April 1, 1931, the applicant,  
W. V. Griffin and H. W. Purvis, receivers, alleges  
that its rates of pay for the transportation of the  
mails are not fair and reasonable. Applicant  
requests the Commission to reexamine the facts

and circumstances surrounding such transportation and to fix and determine fair and reasonable rates to be received for services rendered on and after April 1, 1931.

The rates paid are those established in *Railway Mail Pay*, 144 I. C. C. 675, effective August 1, 1928. An order for reexamination was entered on May 14, 1931. A test period of 28 days, from September 28 to October 25, 1931, for obtaining space and other data was selected by the applicant and the Post Office Department, hereinafter referred to as the department. In this period the space operated in all passenger train cars was recorded, for passenger proper, including baggage and miscellaneous, express, and mail. Two units of mail service are authorized and used: a 15-foot railway post-office apartment unit and 3-foot closed-pouch units. In the test period 95 percent of the service was rendered in the 15-foot apartment unit, the rate for which is 14.5 cents per mile. The apartment unit is used in each direction, daily between Valdosta and Augusta, Ga., a distance of 222.9 miles, and daily, except Sundays, between Augusta and Tennesse, Ga., 83.3 miles. In the calendar year 1931, apartment service constituted 72.15 percent of the total. The 3-foot closed-pouch service is used under 20 authorizations for hauls of from 8.5 to 56.9 miles. The rate is 4.5 cents per mile. The frequency of this service varies from service on Sundays only to six days per week. The total pay for the calendar year 1931 was \$35,728, exclusive of \$979 for service in motor cars.

Throughout the test period 3,045,704 car-foot miles were operated in passenger-train service for passenger proper, baggage, miscellaneous express,

and mail. This total includes all passenger-train cars, passenger coaches, sleeping and dining cars, and combination and mixed-traffic cars, except motor cars. The distribution of the total among the several services is made in accordance with the plan used in prior cases. The method is described in *Railway Mail Pay, supra*. In this plan, referred to here and in the prior proceeding as plan 2, car-miles and car-foot miles of operation in cars employed exclusively for one service are referred to as full cars, whether loaded or not, and the entire operation of each is allocated to the service to which it is assigned. The space in combination and mixed cars is allocated to each service according to the space used, except that space authorized for mail is regarded as space used. The unused space in such cars is apportioned in proportion to the space used. The results of the allocation and apportionment of the car-foot miles under plan 2 are shown in the following table:

Class of service	Full cars	Combination and mixed cars				Total all cars	
		Used <sup>1</sup>	Per- cent of total used	Appor- tion- ment of unused	Per- cent of un- used	Amount	Per- cent
Passenger proper, includ- ing baggage and miscel- laneous	1,728,382	368,300	49.25	280,456	49.25	2,377,144	78.05
Express		119,603	15.99	91,056	15.99	210,649	6.92
Mail		259,968	34.76	197,943	34.76	457,911	15.03
Total	1,728,382	747,867	100.00	569,455	100.00	3,045,704	100.00

<sup>1</sup> Authorized in case of the mail.

The car-foot miles of service in the test period of 28 days was equivalent to 82.78 percent of the car-foot miles for a 28-day period computed

from the total car-foot miles actually operated throughout the year 1931. The department therefore adjusted the space data to reflect the actual operation for the year. This resulted in a space ratio for mail under plan 2 of 12.96 instead of 15.03. The ratio for passenger, including baggage and miscellaneous, is 80.35 and for express 6.69. The applicant while criticizing the adjustment does not contest it.

The space ratios are applied to the expenses. The ratios of expense so derived are used to apportion investment in road and equipment, except items directly allocated. The direct allocations are relatively small.

For the year ended December 31, 1931, the total operating expenses, railway tax accruals, net equipment and joint-facility rents were \$1,449,801. Of this amount 21.74 percent, or \$315,273, was apportioned to passenger-train service in accordance with the formulas prescribed for class I roads for the separation of expenses between freight and passenger services. Certain expenses were directly allocated to passenger traffic. The remainder was apportioned upon the space ratios as adjusted by the department. The total apportioned to mail was \$40,673. The computed deficit in net railway operating income from mail was \$4,945.

The total investment in road, excluding unrelated items, was \$15,864,462. Of this, 21.44 percent, or \$3,401,578, was apportioned by the department to passenger-train service. The part of the latter amount apportioned to mail upon the adjusted space ratio was \$438,803. The total investment in equipment, less depreciation, allocated



to the passenger-train service was \$135,257, approximately 10 percent of the total. Of this amount \$18,279 was allocated and apportioned to the mail service. The total investment in road and equipment allocated and apportioned to mail was \$457,082. A return upon this computed at 5.75 percent is \$26,282 which, added to the indicated deficiency in net railway operating income from mail of \$4,945, brings the total claim of the carrier for increased compensation to \$31,227. To meet it upon the basis of 1931 operations would require an increase in compensation of 87.40 percent.

The department opposes any increase upon the principal ground that the present rates were established as reasonable for all carriers based upon an examination of the service as a whole. The applicant, however, under the railway mail-pay statute is entitled to show, if it can, upon re-examination that insofar as it is concerned the rates so established are not fair and reasonable. In determining that issue we must take into consideration all factors that have a bearing upon it.

An examination of the data shows that of the three services included in passenger-train service as a whole the mail service makes the best showing with respect to revenue. The total mail revenue of \$35,728 for the year 1931 on a space ratio of 12.96 was only \$594 less than the total revenue from passenger service proper, including baggage, and miscellaneous service, with a space ratio of 80.35. The operating ratio for the entire passenger-train service, including express and mail was 357.43. The distribution of expense

upon the space ratios shows that the operating ratio for mail service was 102.79, as compared with 630.41 for passenger proper, including baggage, etc., and 249.67 for express. In other words, the passenger service proper including baggage and miscellaneous, with a total revenue of \$36,322 showed a computed deficit in net revenue from railway operations of \$192,661; express with a revenue of \$7,593 showed a deficit of \$11,364; and mail with a revenue of \$35,728 showed a deficit of only \$997. The total passenger-train service revenue was equal to 5.86 percent of the total railway operating revenue. The railway operating expense allocated and apportioned to the passenger-train service was 21.33 percent of the total railway operating expense.

The data also show that in the three years 1929 to 1931, inclusive, mail revenues have been relatively more stable than the revenues from the other passenger-train services. In 1929, the revenue from passenger proper, including baggage, etc. was \$111,289, from express, \$21,681, and from mail \$40,904. In 1930, revenue from passenger proper, etc. was \$64,038; from express, \$12,463, and from mail, \$39,087. In 1931, revenue from passenger proper, etc. was \$36,322, from express \$7,593, and from mail, \$35,728. Revenue from passenger proper decreased 67 percent, from express, 64 percent, and from mail, 12 percent.

Passenger revenue from passenger-train service as a whole including express and mail, in 1929, was \$173,874; in 1931, it was \$79,643, a decrease of 54 percent. Allocated and apportioned passenger-train railway operating expenses decreased only 23 percent in the same period, that is, from

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\$370,740 in 1929 to \$284,667 in 1931. The number of car-miles operated in passenger-train service decreased 25 percent in the same period.

The department showed the maximum and minimum number of mail bags, or their equivalent in packages carried outside such bags, handled on any trip, and the average of the maximum and minimum handled in 3-foot closed-pouch units on all trips during the test period. This unit, which is the smallest unit that can be authorized, has a maximum capacity of 56 bags, or the equivalent in outside packages. During the test period the maximum number carried on any one trip ranged from 6 to 27; except in one instance 61 were carried. The average maximum number handled on all trips ranged from 2 to 20, except in the one case referred to where it was 55 upon an authorization on Sundays only, between Tennille and Keysville, Ga., a distance of 56.9 miles. The miles of service per year of this authorization constituted about 4 percent of the total miles of service per year in all the 3-foot closed-pouch units. Miles of service in closed-pouch units for the year 1931 were 27.84 percent of the total miles of mail service. The revenue therefrom was about 12 percent of the total mail revenue. In the test period the relation of service in closed-pouch units to the total was different. In that period only 5 percent of the service was in such units. As shown before, the actual use of the units was considerably below the maximum capacity. The use of authorized space for mail in the space study instead of space actually occupied resulted in a somewhat higher space ratio and the apportionment of greater expense to the mail. In this in-



stance, probably, the difference in the result for the test period would not be great because of the small amount of closed-pouch space in relation to the total in the test period. Applied to operations for a full year, however, the difference probably would be considerable. The 15-foot apartment unit earned by far the greater portion of the revenue. The department states that if the mail-pay rates are increased consideration of economy might compel a discontinuance of apartment-car service where closed-pouch service at lower rates would suffice.

Applicant bases its claim for higher rates upon the space data of the test period and their application in a cost study; and also upon the fact that, because of its low traffic density and low earnings per mile of road, it is not comparable with many class I roads which receive the same rates of pay.

The cost study is not considered to be an accurate ascertainment of the actual cost of service. It is an approximation to be given such weight as seems proper in view of all the circumstances. See *Railway Mail Pay, supra*. The comparison of mail revenue with other revenue received for services in passenger-train operations shows that mail with relation to the other services is bearing its fair share of the expenses of operation and is contributing relatively more than the other services for the space furnished. Applicant receives the same rates as those received by other roads for the same kind of service. Many of these other roads are, as applicant points out, roads which are very much larger and which have greater traffic and lower unit operating costs.

On the other hand many are in much the same situation as the applicant in respect of passenger-train operations. The data submitted fail to justify giving the applicant rates higher than those now paid other railway common carriers for like service.

We find that the rates of pay now received by applicant for the transportation of mail, established in *Railway Mail Pay*, 144 I. C. C. 675, for railroads over 100 miles in length, are fair and reasonable. The application for increased compensation is denied.

An appropriate order will be entered.

No. 9200\*

RAILWAY MAIL PAY

IN THE MATTER OF APPLICATION OF GEORGIA &  
FLORIDA RAILROAD FOR INCREASED RATES OF PAY

Submitted January 9, 1936. Decided February  
4, 1936.

UPON FURTHER HEARING RATES PAID APPLICANT FOR  
TRANSPORTING THE MAIL FOUND FAIR AND REASON-  
ABLE. PRIOR REPORTS, 192 I. C. C. 779 AND 144  
I. C. C. 675

Moultrie Hitt and G. Kibby Munson for appli-  
cant.

Karl A. Crowley and William C. O'Brien for  
Postmaster General.

REPORT OF THE COMMISSION ON FURTHER HEARING

By the Commission:

Exceptions were filed by applicant, Georgia &  
Florida Railroad, to the report proposed by the  
examiner and the proceeding was orally argued.

This proceeding, the prior report in which was  
made by division 5 in 192 I. C. C. 779, was re-  
opened upon our own motion after the United  
States District Court, Augusta Division, South-  
ern District of Georgia, in a suit brought by  
applicant, set aside the order of division 5. That  
order prescribed as fair and reasonable the rates  
now paid applicant for transporting the mail.

Service is furnished by applicant in 15-foot railway post-office apartment units at a rate of 14.5 cents per mile and in 3-foot closed-pouch units at 4.5 cents per mile. —Those rates were prescribed by us in *Railway Mail Pay*, 144 I. C. C. 675, after a general reexamination of the rates of pay for all railway common carriers.

At the further hearing the Post Office Department, hereinafter called the department, put in evidence the detailed rules governing separation of operating expenses between freight service and passenger service in the study of expense for transporting mail on the Georgia & Florida based on a test period of 28 days, September 28 to October 25, 1931. Space and other data included in that study are described in the prior report. No additional tests have been made.

Passenger-car miles in 1934 were 37 percent less than in 1931. Freight-car miles decreased 5.3 percent. Car-foot miles of mail service decreased 7.4 percent, due for the most part to the abandonment of a branch line by applicant. Annual mail compensation decreased \$7,561, approximately 21 percent.

At the prior hearing the parties submitted the final results obtained from the separation of expenses between freight service and passenger service. The amount computed for the latter was apportioned among services rendered in passenger trains, passenger proper including baggage and miscellaneous, express, and mail. The methods employed for the initial division between freight and passenger were explained by the department at the further hearing. The department also showed the result of applying the methods to the



counts in the general account for maintenance of equipment, omitting common expenses in certain accounts which were apportioned upon the same basis as common expense for superintendence.

Transportation (rail-line) expense allocated and apportioned to passenger service totaled \$123,469. The largest single item in this was for fuel for train locomotives, which for the most part was directly assigned to each service according to use. The item for train engine men, \$20,450, was also assigned directly. Common expenses in mixed-train service were apportioned on the basis of car-miles operated in mixed trains, and other common expenses on the basis of the direct assignments.

Expenses for trainmen and train supplies, \$23,219, were similarly allocated and apportioned. Station-employee expenses, \$16,807, were directly allocated where possible and the balance was apportioned according to the percentages used to divide common expenses in the item for "superintendence, transportation, rail line." Common expenses in the latter item were apportioned according to freight and passenger proportions of the aggregate of all primary accounts in the general account for transportation, rail line, omitting certain accounts in which common expenses were apportioned upon the percentages derived from the superintendence account.

Another element of doubt, as to the reliability of the space study as a basis for determining the cost of service, arises from treating the 3-foot units of authorized mail space as the full space used by mail, regardless of the mail load carried. In other mail-pay proceedings the authorized mail

space was also treated as the mail space used but the actual mail load carried was also given consideration in the final ascertainment of reasonable compensation. See *Railway Mail Pay*, 95 I. C. C. 493, 512, 144 I. C. C. 675, 696, 706, 151 I. C. C. 734, 743. The full capacity of a 3-foot unit, which contains 121.5 cubic feet, is 56 bags of mail or the equivalent in packages not carried in bags. The largest number carried during the test period in the 3-foot units on the various trips, including all routes, ranged from 6 to 27 bags, except for service on Sunday only between Tennille and Keysville, Ga., where 61 was the maximum. The average of the maximum loads, however, on all trips, ranged from 2 bags on the Broxton-Douglas route to 20 bags on the Midville to Statesboro, via Graymont route, except on trips between the two points above named, where the maximum was 55 bags. The minimum number carried on any trip ranged from 1 to 6. The average minimum load ranged from one bag on the Tennille-Keysville route to nine bags on the Douglas-Broxton route. The space furnished to meet authorizations for 3-foot units is not set aside for exclusive mail use. The mail sacks and packages are carried with the baggage and express and may actually use more or less than 3 linear feet of car length, depending upon the number and the arrangements for loading and unloading the mail, baggage, and express en route.

The methods used in this, as in all prior railway-mail pay proceedings, to ascertain and compute the proportions of operating expense and the separations into expenses for freight service and passenger service respectively, show that the por-

tion assigned to either service may change due solely to changes in the other. The portion assigned to mail may also change with changes in the passenger and express services, even where there is no change in the mail service. The extent will depend upon the amount of change in the passenger-train expense and the change in the space ratios.

A comparison of revenue received by applicant from the three services rendered in passenger-train service shows that the mail service pays considerably more for equivalent units of service than passenger proper, or express. The units used in this comparison are derived from the space ratios and include proportionate amounts of unused space, without considering the amount and character of such space or the load carried in the 3-foot units.

In passenger-train service operations in 1931, applicant received \$35,728 from mail service for 12.96 percent of the total car-foot miles of service, \$7,593 from express for 6.69 percent, and \$36,322 from passenger proper for 80.35 percent. Revenue per car-foot mile, based upon the above percentages of space, from mail was 5.75 mills, from express 2.36 mills, and from passenger proper 0.94 mills. Upon a computed unit-of-service basis, the amount paid by the department for carrying mail was about two and one-half times as much as the amount received by applicant from carrying express and about six times as much as the amount received for passenger service proper. Mail revenue from 12.96 percent of the total car-foot miles operated was 44.86 percent of the total passenger-train service revenues,

express revenue from 6.69 percent of the car-foot miles was 9.53 percent of the total, and passenger revenue proper from 80.35 percent of the car-foot miles was 45.61 percent of the total.

The foregoing computations are derived solely from the space and revenue studies. They show that in relation to the other services the department pays a considerably greater amount per car-foot mile of service than the carrier receives from other services rendered in the same trains.

The average computed expense per car-foot mile allocated and apportioned to passenger-train service as a whole, including mail and express, based on operations in 1931, was 0.6573 cent. The corresponding figures for passenger, express, and mail, after unused space was assigned to each upon the basis of their space ratios, were respectively 0.658, 0.655, and 0.654 cent. This shows that the expense per car-foot mile assigned in the study to each service, after apportionment of unused space, approximated the average expense per car-foot mile assigned to passenger service as a whole. The average revenue per car-foot mile of authorized mail service was 1.0297 cents which was 56 percent in excess of the average computed expense for passenger-train service as a whole for all space operated.

Investment in road and equipment allocated and assigned to passenger-train service as a whole in the same study was \$3,536,834. A return on this, based on 5.75 percent as used by applicant, would be \$203,367. The car-foot miles of service in the year 1931 based on the department's adjusted figures amounted to 47,965,379. The average return on investment per car-foot mile



operated, therefore, would be 0.424 cent. The average computed expense per car-foot mile plus this return would be 1.0813 cents. The return at the same rate computed for the mail service as previously shown was \$26,282. On the basis of 6,216,313 car-foot miles allocated and apportioned to mail for the year 1931, the return would be 0.422 cent per car-foot mile. This return, plus the apportioned expenditures, amounts to 1.076 cents. Revenue per car-foot mile from authorized mail space was 1.0297 cents which is 0.0516 cent or 4.7 percent less than the hypothetical expense per car-foot mile of passenger-train service as a whole plus the stated return.

Comparison of the revenue per authorized car-foot mile of mail service with the average expense plus the stated return for passenger service as a whole, and with the similar figure for mail service, does not take into consideration any distribution of mail revenue to unused space apportioned to the mail. Whatever distribution be made, the amount assigned to mail service would decrease the mail revenue per car-foot mile. The comparison is made, however, in view of the small amount of mail carried in the authorized units. It indicates that revenue per car-foot mile from the authorized space approaches quite closely the full hypothetical cost per car-foot mile plus the stated return both for mail service and for passenger-train service as a whole.

The record shows that mail in the 15-foot apartment service was handled en route by post-office clerks, and that mail in the 3-foot authorizations was handled on the trains by railroad employees. The latter service in 1931 constituted

27.85 percent of the total mail service and furnished 12 percent of the mail revenue. The record also shows that the average maximum mail load in the 3-foot units, except over the one run previously mentioned, ranged from 2 to 20 bags or outside packages, which was below the maximum load of 56 bags or the equivalent in packages. If adjustment in the computed data were made to reflect the actual use of the 3-foot units, the actual car-foot miles of mail service probably would be less than the authorized and the unit revenue per car-foot mile from mail would be somewhat greater. Expense of transporting mail per authorized car-foot mile, in view of the service rendered by applicant on its trains in connection with it, might reasonably be considered to be somewhat less per car-foot mile than for passenger-train service as a whole.

The matters disclosed in the original hearing upon this application, and considered by division 5 in its prior report, have been carefully considered by us in this reopened proceeding. We have had the benefit of additional testimony in respect of the conditions under which the authorized 15-foot railway post-office apartment is furnished, of a more comprehensive analysis by the department of the underlying data upon which the space and cost studies were made, and of a more detailed examination of the space data, the revenues per car-foot mile and expenses per car-foot mile as related to passenger-train operations as a whole and to each of the three services rendered in that operation.

Giving consideration to all the computations, the extent and cause of the operation of a substan-

primary operating accounts for the year 1931. Additional analyses of the data were furnished by the department and the applicant.

The main question presented by the department at the further hearing is the extent to which the cost study discloses the cost of performing mail service. The basic operating data representative of actual operations by applicant are furnished by the space study. The method, called plan 2, used by the parties in distributing space in combination and mixed-traffic cars is the same as that employed in prior mail-pay proceedings. The department, as in those cases, presented results obtained by applying two other plans, termed plans 1 and 3, which, it contends should be given consideration in determining reasonable rates of mail pay, particularly where, as here, the operations of a single railroad are under reexamination. Those plans were described in *Railway Mail Pay*, 144 I. C. C. 675; 681, 689, and will not be further discussed here.

Plan 2 allocated directly to each class of service the car-foot miles of service in cars operated exclusively for each class. Car-foot miles of service in passenger and mail apartments which are parts of cars partitioned from the remainder of the car were also directly allocated to the respective services. Car-foot miles of occupied space in the remainder of the apartment car, referred to as the baggage end, and in mixed-traffic cars which have no separate apartments, were allocated to the service occupying such space. Unoccupied space in the baggage end of combination cars and in mixed-traffic cars was apportioned among passenger, express, and mail services in

proportion to the occupied, or used, space in such cars. Space authorized for mail was considered to be the occupied or used mail space regardless of the extent it was actually used. Space occupied by passenger and express services in such cars was measured at certain points on the railroad where the load carried for each service was considered to represent an average for the whole route. Neither the first nor the last part of the run was taken. The average space thus measured was used in computing the total car-foot miles occupied by each such service for the run of the car. Every car was measured on the car runs at least once, and in some instances more, where the runs were long.

In the test period, 3,045,704 car-foot miles were operated in passenger-train service. The distribution of this made by applicant to the three services, in the manner described, resulted in final space ratios as follows: Passenger proper, including baggage and miscellaneous, 78.05 percent, express 6.92 percent, and mail 15.03 percent. The total expenses allocated and apportioned to the passenger-train service as a whole for the year 1931 was \$315,272. Of this, \$1,295, or 0.41 percent, was directly assigned to passenger service. The remainder, \$313,977, was regarded as expense common to the three services and was apportioned among them by applying the space ratios of the test period. In this distribution, 15.03 percent or \$47,191 was apportioned to mail service.

Investment in road and equipment allocated and apportioned to passenger-train service by applicant for the year 1931 was \$3,554,377. The amount apportioned to mail by using the mail



space ratio of 15.03 percent was \$534,223. Applicant computes a return on this amount, at 5.75 percent, of \$30,718. The expense plus the stated return equals \$77,909. The mail revenue for 1931 was \$35,728. The additional revenue required based upon these figures would be \$42,181, or an increase of 118 percent.

The computations rest upon the space ratios of the test period applied to the expenses of the entire year of 1931. The department showed that the car-foot-mile figures of the test period extended to one year were only 82.78 percent of the actual car-foot miles operated in that year. The car-foot-mile figures were obtained from the car-miles actually operated in that year as reported by applicant, multiplied by the average length of each class of car operated. The actual car-foot miles of mail service operated in 1931 and paid for were deducted from the total car-foot miles and the balance was apportioned among passenger, express, and unused space upon the ratios of those services and of unused space obtained in the test period, no other ratios or operating data being available. As a final result of this adjustment the department derived, under plan 2, a space ratio for mail of 12.96 percent instead of 15.03 percent.

The application of a mail-space ratio of 12.96 percent to the computed expenses of the passenger-train service resulted in a computed mail expense of \$40,673 or \$6,518 less than the amount first computed. This adjustment is not contested by applicant.

The department's exhibits showed applicant's investment in road and equipment allocated and

apportioned to passenger-train service as, \$3,536,834, or \$17,534 less than applicant's figures. Under plan 2 this was apportioned among the three services upon the ratios of total railway operating expenses allocated and apportioned. These ratios were substantially the same as the space ratios, the mail-expense ratio, for example, being 12.90 percent and the space ratio 12.96 percent. The total mail-service investment thus derived was \$457,082. A return of 5.75 percent upon this sum amounted to \$26,282 which, with the computed expense, brought the total claim for increased compensation to \$31,227, to meet which would require an increase of 87.4 percent in the rates now paid.

The mail operating expenses resulting from the department's adjusted figures totaled \$36,725. Dividing that amount by the mail operating revenue of \$35,728 produces a mail operating ratio of 102.79. The court, which set aside the prior order herein, referred, among other things, to that ratio. Applicant on brief in the instant proceeding in discussing the court's opinion states as follows:

It may be well to emphasize that it was particularly pressed upon the Court's attention by counsel for both sides \* \* \* that the cost study did not purport to be mathematically exact, so the Court's language is not properly to be discounted by any impression that the Court was not apprised of the nature of the cost study. It seems to the applicant quite obvious, both from the context of the Court's opinion, and the arguments to the Court, that the Court meant that, taking it for exactly

what it was; the cost study indicated that for every dollar applicants received for transportation of mail they expended one dollar and 2.79 cents. The Court's finding was certainly an adjudication that the rates of pay heretofore established were totally inadequate, and is authority for further consideration by the Commission and the establishment of substantially increased rates.

There is implicit in the statement quoted, and in the corresponding portion of the opinion referred to, the assumption that if the department discontinues mail service on applicant's trains the applicant will thereby be saved the expenditure of \$1.0279 for every dollar of revenue it thus loses. Considering the character of the expenses included in the study it is clear that no such saving could be made. The importance of the operating-ratio figure has been overemphasized. Relative costs derived from a series of studies of expenditures for operations common to a number of services cannot be converted into absolute costs by using a single-figure relation derived from such studies.

The cost computed in the manner described is a hypothetical cost and not an actual cost, and is not necessarily conclusive as applicant contends. In other mail-pay proceedings, in which space authorized and paid for was found to be the space that should be charged to mail in cost studies similar to that here, consideration was given to other factors as well, such as the amount and character of the unused space reported as operated (*Railway Mail Pay*, 85 L. C. C. 157, 170, 123 L. C. C. 33, 39); the actual space occupied by mail,

as distinguished from authorized space, determined by the mail load carried, based upon a count of bags and of packages outside of bags, and, in some instances, by the weight [*Railway Mail Pay*, 95 I. C. C. 493, 500, 511, 120 I. C. C. 439, 446]; comparisons with compensation received from other services in passenger-train cars (*Railway Mail Pay*, 144 I. C. C. 675, 706); comparisons with freight rates (*Railway Mail Pay*, 144 I. C. C. 675, 705, 151 I. C. C. 734, 742); comparisons per car-mile and per car-foot mile of the computed cost of mail service and the revenue from authorized mail service with the computed cost of corresponding units in passenger-train service as a whole (*Railway Mail Pay*, 144 I. C. C. 675, 699); and the character of the service performed in connection with transporting the mail (*Railway Mail Pay*, 56 I. C. C. 1, 8, *Electric Railway Mail Pay*, 58 I. C. C. 455, 464, 98 I. C. C. 737, 755).

From the relation of the test-period space data to the actual car-miles operated in the year 1931, it is clear that the test-period ratios cannot be applied to the total operating expenses of that year without an arbitrary adjustment to reflect the actual operations for the year. Other evidence at the further hearing discloses also that the space data of the test period cannot be accepted as an accurate guide to an ascertainment of cost, particularly in connection with the operation of the 15-foot railway post-office apartment.

At the further hearing the department showed that applicant operated and continues to operate a 30-foot railway post-office apartment to fill the authorization for a 15-foot apartment. In the



space study the extra 15 feet of space was added to unoccupied space in the combination car and apportioned to all services, including mail, upon the basis of space used. The operation of the 30-foot apartment is for applicant's convenience. It results in the operation of an amount of unused space equal to the authorized 15-foot apartment and thus increases the amount of space and the expense apportioned to mail. The apartment car is operated between Augusta and Valdosta, Ga., 222.9 miles daily in each direction. In the year 1931 a 15-foot railway post-office apartment service was authorized daily except Sundays between Augusta and Tennille, Ga., 83.3 miles. The latter service was discontinued in October 1934, due to the abandonment of the branch line between McAdoo and Tennille Junction, Ga. A 15-foot mail apartment of standard size and specifications provides storage space of approximately 3.2 linear feet, sufficient to carry 50 sacks of mail. In a standard 15-foot apartment no restriction is placed upon the number that may be carried, if the space permits more. Where, however, an oversized apartment is furnished, as in the case here, the use of the 15-foot authorized space is limited to 50 sacks in the storage portion. The mail clerks are required to keep record of all sacks and packages handled when the oversized apartment is furnished, but not when a 15-foot apartment is furnished. The use of distribution facilities in the apartment is limited to the amount provided in 15-foot apartments. The department does not, and may not, make any use of the extra 15 feet furnished. An inspection of the 15-foot apartment service made in March 1935 disclosed

that the distribution facilities and the storage space used did not average over 50 percent of the space available in such a unit. There was no evidence as to the average use in the test period or in the year 1931.

The car in which the 30-foot apartment is operated is 55 feet in length. Space outside the apartment is used for baggage, express, and miscellaneous traffic. In the space study, the 15 feet of unused space in the oversize mail apartment was added to the total unused space in the combination and mixed-traffic cars and apportioned among mail, express, and passenger services in proportion to the space used in such cars. This was done, apparently, upon the theory that if the apartment had been changed to a 15-foot apartment, the remainder of the 30-foot apartment would have been unused and that, therefore, the mail would have been charged, in the space study, with the same proportionate amount. The assumption, however, rests upon the further assumption that the average measured space reported as used by express and by baggage and miscellaneous services would have been the same.

The total space operated in combination cars in the test period, using the adjusted figures computed by the department, was 1,481,016 car-foot miles. Used space reported in the manner previously described totaled 826,703, and unused space 654,313, car-foot miles. The total unused space constituted 44 percent of the total operated. The authorized mail space was 266,175, which was 32.19 percent of the total space in combination cars reported as used. Upon this ratio, mail was apportioned 210,623 car-foot miles of the unused

space. Of the total space allocated and apportioned to mail, 44 percent resulted from apportionment of unused space. The amount of unused space due to the operation of the 30-foot apartment in lieu of a 15-foot apartment was 247,101 car-foot miles and the share of this apportioned to mail was 79,541 car-foot miles. If this amount were eliminated from the total apportioned to mail and assigned to the other services upon the assumption it was and is unnecessarily operated insofar as mail is concerned, an assumption justified upon this record, the mail-space ratio would be reduced to 10.79 percent and the computed mail expense would be reduced to \$34,017 or \$1,711 less than the revenue. This is 27 percent less than the expense computed from the unadjusted test-period data and 16 percent less than that computed by the department upon its adjusted data. The analysis of the space data, its adjustment to reflect operations for a full year, the adjustment of the space ratio upon the assumption that the operation of an oversize apartment causes the operation of unused space of which no part should be charged to mail, show that the computed cost is not an actual but a hypothetical cost.

The method by which total expense for passenger-train service was computed also results in a hypothetical and not an actual cost. It was obtained from direct allocations and from a series of apportionments of expenses common to freight and passenger services. The methods are the same as those provided in our rules governing separation of such operating expenses on large steam railroads.

The total amount of railway operating expenses thus charged to the passenger service was \$284,667. This is derived from a large number of separate expense items. One or two examples will illustrate the methods used in computing it.

Track expense for passenger service, \$64,978, made up of some 15 items, includes maintenance of tracks in yards and in road service. Maintenance in yards with separate switching service used in common by passenger and freight was divided in proportion to the switching-locomotive miles for each service in such yards. The yard switching-locomotive miles were computed at the rate of 6 miles per hour for the time actually engaged in each service. Maintenance expense of all other tracks was apportioned according to the proportion of expense computed for each service in the division of expense in the item for fuel used for train locomotives. The latter expense item for the most part is assigned directly to each service for the fuel consumed.

Maintenance-of-equipment expenses, \$58,725, was allocated directly according to the assignment of locomotive and cars, where exclusively assigned to one service. The common expenses were apportioned. Where locomotives were not run exclusively in one service the expense for repairs of each locomotive or class was divided according to the mileage operated in each service. Repair expenses for yard locomotives were divided according to the freight and the passenger yard switching-locomotive miles. Common expense under the item for superintendence was apportioned according to freight and passenger proportions of the aggregate of all primary ac-



## **OPINION BELOW.**

The opinion of the Court of Claims (R. 36) is reported at 77 Fed. Supp. 197.

The judgment of the Court of Claims was entered April 5, 1948 (R. 50). The jurisdiction of this Court is invoked under the Act of February 13, 1925, C. 229, Section 3, 43 Stat. 939, as amended May 22, 1939, C. 140, 53 Stat. 752, 28 F. S. C. A. 288.

## **STATEMENTS OF THE CASE.**

### **Inaccuracies and Omissions in the Petitioner-Defendant's Statement.**

The petitioner-defendant, by numerous inaccuracies and omissions in its "Statement" and in its "Reasons Why the Writ Should be Granted", has failed to give this Court a fair and correct statement of the case, therefore, in order to more accurately inform the Court as to the material facts and material issues, the respondent-plaintiff respectfully presents the following counter statement:

### **Respondent-Plaintiff's Counter Statement.**

To save duplication the respondent-plaintiff refers to its previous statement of the case in its counter petition in Case No. 198, filed August 5, 1948, in which the paragraphs are numbered (1) to (10); to which the following supplemental paragraphs are now added:

(11) The said Railway Mail Pay Act made it the duty of the Interstate Commerce Commission to determine upon the basis for the transportation of the mail by railroad common carriers; and to prescribe just and reasonable rates therefor to compensate the carriers for the compelled taking of their property and services (Finding 3, R. 14).

(12) After an elaborate nation-wide investigation in the first general railway mail pay case in which the Postmaster



General and a Committee of Class 1 carriers co-operated (Finding 7, R. 16), the Commission in a report and order dated December 29, 1918 (54 I. C. C. 1) adopted the space basis and set the pattern for determining and fixing rates of compensation by means of joint cost studies (Findings 7 and 8, R. 16, Finding 9, R. 17), and (Finding 10, R. 17), to which basis and pattern it has since generally adhered (Finding 11, R. 19, Finding 12, R. 19, Finding 13, R. 19).

(13) In establishing the general pattern the Commission classified the steam carriers into two major groups, viz.:

(a) The first group consisted of steam carriers over 100 miles in length (Finding 9, R. 17, Finding 10, R. 17) regardless of enormous differences between them. Most of the carriers in this first group are termed Class 1 railroads because they derive from their operations gross railway revenues of one million dollars or more per annum. They range in size from light traffic lines with a gross of barely over one million and a net deficit to others of heavy traffic density with a gross of more than a hundred million dollars and substantial net earnings,<sup>2</sup> (Trans. in 63 (1937) side folio numbers 143, 146, 147, 322, 323; and Pl. Ex. 24, R. 153).

<sup>2</sup> *Statement by counsel for Post Office Department:*

"Mr. Niess. I just wish to remark that in fixing the rates of pay for the transportation of mail by steam railroads in the large mail pay case the Commission arbitrarily divided the roads into classes according to their length, and this road falls into Class 1. In fixing the rates for that class the Commission did not try to give a profit to every road, but they were obliged to use an average. It happens, unfortunately, that this road is below the average, and, therefore, not making a profit.

"Mr. Examiner, in respect to this exhibit, we will not oppose its receipt for what it may be worth. I wish to call your attention to the fact that they are all over 2,000 miles long, the largest trunk lines in the country and not properly comparable with the line of the size of the Georgia & Florida Railroad. (Test. pp. 9033, 9043.) They also receive the same rates of mail pay." (Trans. in 63 (1937) side folio 144, 146.)

9(b) The second group consisted of independently operated steam-carriers less than 100 miles in length subdivided into two groups, with the dividing line between them drawn arbitrarily at 50 miles regardless of any other differences (Finding 10, R. 17, 18).

(14) Compensation to the carriers at rates for each different size of space units fixed by the Interstate Commerce Commission has been determined upon a *lumped average* of the cost studies for all the steam carriers in the respective major groups (Finding 10, R. 18).<sup>1</sup>

(15) The Georgia & Florida Railroad operated by the plaintiffs is a victim of anomalous classification. It is a very weak carrier. (Trans. in 63 (1937) folio 133; and Finding 2, R. 13; and *Georgia & Florida Reconstruction Loan*, 184 L. C. C. 332, 340); and in poverty, thinness of traffic, with consequently high unit costs, and in nearly every other general characteristic, the Georgia & Florida is similar to most short lines in the second group. However, because its length exceeded 100 miles it was classified for compensation with the first group at same unitary rates derived from the lumped average costs of the comparatively low unit costs of the largest systems with the heaviest traffic density (Trans. in 63 (1937) folio 323, and Finding 10, R. 17, 18).

<sup>1</sup> Carriers in the second group are termed Class II carriers if they have gross railroad operating revenue of more than one hundred thousand but less than one million dollars. If they have gross railway operating revenues of less than one hundred thousand, they are termed Class III carriers. Mileage alone is the sole factor which determines the grouping of lines less than one hundred miles in length, irrespective of whether they are Class II or Class III carriers.

<sup>2</sup> The difference between the levels of the respective scales of unit rates for lines in the first group over 100 miles in length, and those of lesser length in the second group, is very substantial (Finding 10, R. 17, 18; (Finding 13, R. 19, 20), but the rates ordered for each carrier fixed upon the lumped average of the cost studies for each are the same for all carriers in that group regardless of whether the result to individual carriers is compensatory or confiscatory (Finding 10, R. 17, and Trans. in 63 (1937) folio 38, 39).

(16) In the second general Railway Mail Pay Case, decided July 10, 1928 (144 L. C. C. 675) the Commission, relying on the results of cost studies of the same kind previously approved by it, found that the lumped average of the cost studies for roads in the first group indicated the need for an increase of 26.61 per cent, but it awarded them only 15 per cent. For carriers in the second group, the lumped average indicated the need for an increase of 91 per cent, but it awarded them 80 per cent. However, for the Georgia & Florida Railroad the separate cost study indicated the need for an increase of 78%, but the Commission by again lumping the Georgia & Florida with the first group, Class 1, only awarded it the latter's average increase of 15 per cent. (Finding 13, R. 19, 21).

(17) That aforesaid increase of July 10, 1928, resulted in a rate for the Georgia & Florida for a 15 ft. Post Office apartment (pictured by Pl. Ex. 19, R. 145) of only 14½ cents per mile as compared with 27 to 34 cents for comparable weak lines under 100 miles in length; and, for 3 ft. closed pouch service, only 4½ cents per mile for the Georgia & Florida as against 8 cents to 10 cents for comparable but shorter lines (Finding 13, R. 20).

(18) The petitioner-defendant is in opposition to any greater compensation for the Georgia & Florida, despite the fact that in the separate proceeding instituted April 1, 1931, the Commission found that the cost study showed the need for an increase of 87.40% (192 L. C. C. 779, 214 L. C. C. 66, Finding 16, R. 22, Finding 18, R. 25, and finding 23, R. 27).

(19) In its petition to this court for writ to review the judgment of the Court of Claims, the petitioner-defendant has reversed its previous position in *U. S. v. Griffin, supra*, in now contending that mail pay compensation is a matter of legislative rate making.

## THE QUESTIONS PRESENTED.

On page 2 of the defendant's petition it is represented that there are four questions, as follows:

1. Whether the Court of Claims has jurisdiction to increase the rates of compensation fixed by the Interstate Commerce Commission under the Railway Mail Pay Act of July 28, 1916 which provides that the Commission, after notice and hearing, shall "fix and determine . . . the fair and reasonable rates and compensation for the transportation of such mail matter".

2. Whether respondents have failed to exhaust their administrative remedy by bringing suit without requesting the Postmaster General to make a special contract for the transportation of the mails; as authorized by the Act, "Where in his judgment the conditions warrant the application of higher rates" than those provided under the Act.

3. In the event there is jurisdiction in the Court of Claims, whether the scope of review permits the substitution of the court's judgment as to what constitutes fair and reasonable rates for that of the Interstate Commerce Commission.

4. Whether fair and reasonable rates and compensation for transporting mail must, as a matter of law, include compensation for the cost to the railroad of operating unusual amounts of unused space in cars carrying mail."

However, on page 17 of the petition, under the heading "Reasons For Granting the Writ", it is represented that:

"This case presents the question whether orders of the Interstate Commerce Commission fixing, after notice and hearing, the rates of compensation at which common carriers by rail shall carry the United States mails are reviewable in the Court of Claim at all, and, if so, the extent to which they are reviewable;" and that

"This question has not heretofore been presented to this Court and should be resolved at this time because of the importance of settling the reviewability of railway mail pay rate orders."

tial portion of the unused space, the fact that a theoretical cost and not actual cost is derived from the methods and plans adopted, and the small amount of mail carried in the authorized units of service, we find upon this augmented record that the present rates for transportation of the mail by the applicant are fair and reasonable.

An appropriate order will be entered. .

Commissioner Porter dissents. Commissioners Tate and Caskie did not participate in the disposition of this proceeding.



